

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COMMONWEALTH CARE ALLIANCE,  
HEALTH CARE FOR ALL, EMILY  
FEINBERG, individually and on behalf of  
persons similarly situated,

Plaintiffs,

v.

MERCK & CO., INC.,

Defendant.

CIVIL ACTION No. 05-CV-10931-DPW

**DEFENDANT MERCK & CO., INC.'S MEMORANDUM IN SUPPORT OF ITS  
MOTION TO STAY ALL PROCEEDINGS PENDING A TRANSFER DECISION BY  
THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**INTRODUCTION**

Defendant Merck & Co., Inc. (“Merck”) moves this Court to stay all proceedings in this action pending its likely transfer to *In re VIOXX Products Liab. Litig.* (MDL-1657), the MDL proceeding that has been established in the Eastern District of Louisiana to coordinate all product liability cases involving alleged health risks from VIOXX® (the “VIOXX® cases”). *See* Transfer Order, attached hereto as Exhibit A.

This case is one of many that have been filed recently in both federal and state courts around the country concerning VIOXX®. Merck has provided notice to the JPML, pursuant to J.P.M.L. Rule 7.5, of the pendency of this “tag-along” action. *See* May 10, 2005 Letter of Leslie M. Ballantyne, attached as Exhibit B. Merck expects the Panel to issue a Conditional Transfer Order for this case shortly.

Pending the transfer of this case to the Eastern District of Louisiana, a stay of proceedings is necessary and appropriate to achieve the judicial economies that underlie the

MDL statute, 28 U.S.C. § 1407. Absent a stay, this Court would have to waste time supervising pretrial proceedings and making rulings in a case over which it will likely soon lose jurisdiction — and will probably never see again. Moreover, without a stay, Merck would be significantly and unfairly prejudiced because it would have to duplicate discovery in jurisdictions around the country.

## **BACKGROUND**

### **A. MDL-1657**

On February 16, 2005 the MDL Panel issued a transfer order establishing MDL Proceeding No. 1657, *In re VIOXX Products Liability Litigation*. The Transfer Order directed that the 148 cases subject to original motions be transferred and coordinated for pretrial proceedings in the U.S. District Court for the Eastern District of Louisiana, before the Honorable Eldon E. Fallon. *See* Transfer Order, Exhibit A. In the Transfer Order, the Panel expressly held that the VIOXX® product liability cases have overlapping questions of fact:

On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Louisiana will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions focus on the alleged increased health risks (including heart attack and/or stroke) when taking Vioxx, an anti-inflammatory drug, and whether Merck knew of these increased risks and failed to disclose them to the medical community and consumers. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

*Id.* at 2.

The MDL Panel also held that the “nearly 300 potentially related actions pending in multiple federal districts . . . will be treated as potential tag-along actions.” *Id.* at 1 n.1. The MDL Panel has been issuing conditional transfer orders transferring additional related cases to Judge Fallon. The first conditional transfer order was issued on March 4 and listed 139 cases,

the second conditional transfer order was issued on March 10 and listed 74 cases, and subsequent transfer orders have been issued more or less weekly thereafter.

Merck has provided written notice to the MDL Panel of this “tag-along” action in its most recent letter to the MDL Panel. *See* Ballantyne Letter, Exhibit B. Merck expects a conditional transfer order to be issued by the MDL Panel in this action no later than two weeks from now. Assuming the Plaintiffs do not object within the 15-day period contained within the MDL rules, the transfer order will be filed in Judge Fallon’s court upon expiration of the Plaintiffs’ period to object, and the case will be transferred for coordinated pretrial proceedings.<sup>1</sup>

**B. The Instant Action**

On or about February 17, 2005, Plaintiffs commenced this action against Merck by filing a Complaint in the Suffolk County Superior Court. The case was assigned the docket number 05-0644. On April 20, 2005, Merck was served with a copy of Plaintiffs’ Complaint, and on May 5, 2005, Merck answered the Complaint and removed the action to this Court based on diversity jurisdiction under 28 U.S.C. § 1332. There is no dispute that this case involves the same factual inquiries that the Panel notes were present in the VIOXX® cases generally, thereby warranting coordinated pre-trial proceedings in the Eastern District of Louisiana. Specifically, it is clear from the face of the Complaint that this case, like the other VIOXX® cases, focuses on the increased health risks allegedly caused by the ingestion of VIOXX®, an anti-inflammatory drug, and whether Merck knew of these increased risks and failed to disclose them to the medical community and consumers. For example, the Plaintiffs allege that “Defendant knew Vioxx was unsafe and increased the risk of adverse cardiovascular events, such as heart attack and stroke, to

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<sup>1</sup> There is a separate procedure by which the Plaintiffs may file an objection (and supporting materials) with the MDL Panel, should it choose to oppose the transfer. The Panel will then set down the objection for consideration at its next hearing session. Given the overlapping factual issues this case appears to have with those already in the MDL proceedings, however, any opposition the Plaintiffs might raise would almost certainly be futile.

unacceptable levels, but omitted to disclose these facts to doctors and patients until September 2004.” Complaint ¶ 110(b).

In fact, this case makes allegations similar in substance to those raised in the *Saia* class action, which the plaintiff brought in this Court last October. *See Saia v. Merck & Co., Inc.*, No. 04-12166-RCL (Oct. 14, 2004) (proposing a class action over fraud claims relating to VIOXX® ingestion). The *Saia* case was included in the original MDL Transfer Order and now resides in the Louisiana coordinated proceedings.

### **ARGUMENT**

#### **I. THIS CASE SHOULD BE STAYED PENDING TRANSFER TO THE MDL**

Guided by the “policies of justice and efficiency,” this Court should exercise its discretion to stay all further proceedings here pending the Panel’s action. *Boudreaux v. Metropolitan Life Ins. Co.*, No. 95-CV-138, 1995 WL 83788, \*1 (E.D. La. Feb. 24, 1995). The power to stay is well established and particularly apt here. It is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Where the Panel has already decided that coordination is appropriate and has designated a venue for the coordinated proceedings, a stay is appropriate pending conditional transfer to those proceedings. *See New Mexico State Investment Council v. Alexander*, 317 B.R. 440, 446 (D. N.M. 2004); *Mathern v. Wyeth*, No. 04-CV-2116, 2004 WL 1922028, at \*1 (E.D. La. Aug. 25, 2004); *Knearex v. Bayer Corp.*, No. 02-CV-2096-CM, 2002 WL 1173551, at \*1 (D. Kan. May 7, 2002); *Jackson v. Johnson & Johnson, Inc.*, No. 01-CV-2113-DA, 2001 WL 34048067, at \*6 (W.D. Tenn. Apr. 3, 2001).

Guiding a court's exercise of its prerogative to stay a case, pending the Panel's decision on transfer of an individual action, are (1) considerations of judicial economy and (2) avoidance of conflicting rulings. *Mathern*, 2004 WL 1922028, at \*1. As Merck argues below, both of these factors favor granting a stay of this action. The overwhelming majority of courts to have considered the issue have agreed: literally hundreds of VIOXX® cases have been stayed by courts around the country, including the District of Massachusetts, pending MDL coordination. *See Lach v. Merck & Co., Inc.*, No. 05-CV-10583-PBS (D. Mass. Apr. 25, 2005).

These decisions in other VIOXX® cases make clear the necessity of a stay here. For example, in *Denny v. Merck*, the Southern District of Texas court stayed all proceedings over the plaintiffs' objection, holding that "[t]he power to stay all proceedings is well established and particularly apt here." Judge Kent observed there that "[i]t would not be efficient for this Court to invest its limited time and resources in this claim, only for it to be transferred to MDL. Moreover, both sides will benefit by having a court familiar with the complex issues that arise in pharmaceutical claims." *Denny v. Merck & Co., Inc.*, No. G-04-526 (S.D. Tex. Dec. 6, 2004), *see* Abruzzi Decl. ¶ 2, Exhibit A, at 2. *See also Davis v. Merck & Co., Inc.*, No. 04-CV-2937 (E.D. La. Jan. 5, 2005) (minute entry), *see* Abruzzi Decl. ¶ 3, Exhibit B (staying an action because of "the great likelihood that an MDL will be established and this and other related cases transferred."). These concerns are just as pertinent in this action.

**A. Judicial Economy Mandates a Stay.**

Because of the overlapping factual issues and similar legal theories that exist in the VIOXX® cases currently pending in federal court, including this civil action, much work would be needlessly duplicated if pretrial proceedings and discovery continues to go forward on a parallel track with MDL-1657. Moreover, if this Court were not to issue a stay, it would be

making rulings that would likely be reconsidered after this case is transferred to Judge Fallon's court. As the court in *U.S. Bank* noted in granting defendant's motion for a stay, "[i]f the MDL motion is granted, all of the Court's time, energy, and acquired knowledge regarding the action and its pretrial procedures will be wasted." *U.S. Bank, Nat'l Ass'n*, 2002 WL 31114069, at \*2. *See also Fontanilles v. Merck & Co., Inc.*, No. 04-CV-22799-HUCK (S.D. Fla. Dec. 14, 2004), *see* Abruzzi Decl. ¶ 4, Exhibit C, at 2 ("Judicial consistency, economy and uniformity among similar VIOXX cases would be served by deferring resolution of the remand issue at this time"); *Falick v. Merck & Co., Inc.*, No. 04-CV-3006 (E.D. La. Jan. 3, 2005), *see* Abruzzi Decl. ¶ 5, Exhibit D, at 2 ("Considering the multitude of cases currently stayed due to the pending MDL coordination, the Court finds that staying the proceedings will serve the interests of judicial economy."). The Court should not expend its limited resources "familiarizing itself with the intricacies of a case that would be heard [for pre-trial purposes] by another judge." *See Rivers v. The Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997). Indeed, Judge Fallon has already issued orders anticipating the transfer of cases like this that will immediately apply upon transfer of the case to his court. *See, e.g., In re VIOXX® Products Liability Litigation*, Pretrial Order #1, attached hereto as Exhibit C, at 1-2 ("This order . . . will also apply to any 'tag-along actions' later filed in, removed to, or transferred to, this Court.").

The Court should also not hold additional status conferences or issue additional discovery orders, because "any efforts on behalf of this Court concerning case management will most likely have to be replicated by the judge that is assigned to handle the consolidated litigation." *See Rivers*, 980 F. Supp. at 1360-61. Moreover, MDL courts regularly decide *Daubert* and dispositive motions before they return a case to the original transferor court. *See, e.g., In re Rezulin Prods. Liab. Litig.*, 309 F. Supp. 2d 531 (S.D.N.Y. 2004) (excluding the plaintiffs'

causation and regulatory experts under *Daubert*); *In re Propulsid Prods. Liab. Litig.*, 261 F. Supp. 2d 603 (E.D. La. 2003) (granting the defendant pharmaceutical manufacturer's motion for summary judgment). In fact, it is unlikely that this Court will ever see this case again after its transfer to MDL-1657. A 2004 report from the Administrative Office of the United States Courts reveals that fewer than 10% of the cases that have been resolved through MDL treatment since Congress enacted the MDL statute were ever transferred back to the original transferor district. Accordingly, a stay will conserve judicial resources.

In addition to the waste of judicial resources that would follow from proceeding with this action prior to the inevitable MDL transfer of this case, the necessarily duplicative discovery and motion practice would substantially prejudice Merck. *See American Seafood*, 1992 WL 102762, at \*2 (holding that "[t]he duplicative motion practice and discovery proceedings demonstrate that judicial economy and prejudice to the defendants weigh heavily in favor of a stay"). Plaintiffs across the country will surely notice the same set of Merck employees and former employees for deposition. Without a stay, Merck could well be required to produce these witnesses multiple times in different jurisdictions.

A stay will not unduly prejudice the Plaintiffs in this action. First, the stay would work only a brief postponement in the initiation of discovery, an inconvenience to the Plaintiffs that is relatively minimal when compared to the prejudice to Merck. *See Arthur-Magna*, 1991 WL 13725, at \*1 (noting that even if a temporary stay can be characterized as a delay prejudicial to plaintiffs, there are considerations of judicial economy and hardship to defendants that are compelling enough to warrant such a delay). Indeed, all of the parties — including the Plaintiffs here — will benefit from the efficiencies of coordinated pretrial case management. Second, this action is not on the eve of trial. The Plaintiffs served Merck in April, and discovery has not yet

begun. A short delay in the proceedings at this point in this case, when the Plaintiffs have expended limited resources to date, is minimally prejudicial to the Plaintiffs, if at all. The Court should therefore stay all proceedings in this civil action, pending a determination on the transfer of this case to the MDL.

**B. Without a Stay, There Is a Risk of Conflicting Rulings Between This Court and the MDL Court**

To avoid the risk of inconsistent substantive legal rulings, pretrial proceedings in this civil action and other actions should proceed in an orderly, coordinated fashion, as directed by the single court selected by the MDL panel to coordinate these cases. *See Mathern*, 2004 WL 1922028, at \* 1 (“[A] stay of this case pending transfer to the MDL will promote judicial efficiency and avoid conflicting rulings.”); *Knearem*, 2002 WL 1173551, at \* 1 (“Granting a stay of this litigation avoids the possibility of inconsistent pretrial rulings.”); *Shannon v. Merck & Co., Inc.*, No. 03-CV-105-D-B (N.D. Miss. Nov. 29, 2004), *see* Abruzzi Decl., ¶ 6, Exhibit E (“Here the court finds that because the issues involved in this matter are likely to be similar to other potentially transferred VIOXX cases, the policies of efficiency and consistency of pretrial rulings will be furthered by the this Court staying these proceedings.”). Accordingly, the Court should stay these proceedings to ensure the efficient and consistent resolution of pertinent legal issues before the MDL judge.

**CONCLUSION**

For the foregoing reasons, Merck respectfully requests that this Court grant its motion to stay all proceedings in this case pending transfer to the MDL proceeding that has been established in the Eastern District of Louisiana.



Date: May 19, 2005.

MERCK & CO., INC.  
By its attorneys:

/s/ Bradley E. Abruzzi

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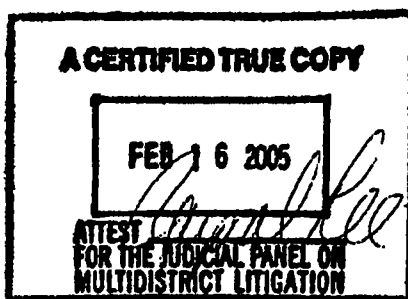
**CERTIFICATE OF SERVICE**

I certify that on May 19, 2005, I e-filed the foregoing DEFENDANT MERCK & CO., INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO STAY ALL PROCEEDINGS PENDING A TRANSFER DECISION BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION, causing a copy of said filing to be served automatically upon:

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/s/ Bradley E. Abruzzi

# **EXHIBIT A**



FILED JUDICIAL PANEL ON  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA FEB 16 2005

RELEASED FOR PUBLICATION

DOCKET NO. 1657

2005 FEB 17 AM 11:37  
LORETTA G. WHYTE  
CLERK

FILED  
CLERK'S OFFICE

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE VIOXX PRODUCTS LIABILITY LITIGATION**

**BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.  
LOWELL JENSEN, J. FREDERICK MOTZ,\* ROBERT L. MILLER, JR.,  
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

**TRANSFER ORDER**

This litigation presently consists of 148 actions pending in 41 federal districts and listed on the attached Schedule A. Before the Panel are two motions, pursuant to 28 U.S.C. § 1407, that taken together seek centralization for coordinated or consolidated pretrial proceedings of all but one of these actions.<sup>1</sup> Plaintiff in one Eastern Louisiana action seeks centralization of this litigation in the Eastern or Western Districts of Louisiana. Defendant Merck & Co., Inc. (Merck) moves for centralization of this litigation in either the District of Maryland, the Southern District of Indiana, or the Northern District of Illinois. Merck also agrees with some plaintiffs that the District of New Jersey would be an appropriate transferee district. AmerisourceBergen Corp., a wholesaler defendant, supports centralization in the Maryland district. Most responding plaintiffs agree that centralization is appropriate, although some plaintiffs suggest alternative transferee districts, including the Northern District of Alabama, the Central or Northern Districts of California, the District of Delaware, the Southern District of Illinois, the District of Minnesota, the Eastern District of Missouri, the District of New Jersey, the Eastern or Southern Districts of New York, the Northern or Southern Districts of Ohio, the Western District of Oklahoma, the Eastern District of Pennsylvania, and the Southern or Western Districts of Texas.

\* Judge Motz took no part in the decision of this matter.

<sup>1</sup>Included in the Section 1407 motions were eleven additional actions pending in the Central District of California (2), the Southern District of California (1), the Southern District of Illinois (2), the Southern District of Indiana (1), the Western District of Missouri (1), the Southern District of New York (1), the Northern District of Texas (1), and the Southern District of Texas (2). These actions have been either remanded to their respective state courts, voluntarily dismissed, or otherwise closed. Accordingly, inclusion of the actions in Section 1407 proceedings is moot.

One other action – *Teamsters Local 237 Welfare Fund, et al v Merck & Co., Inc.*, S.D. New York, C.A. No. 1:04-9248 – was not included on either MDL-1657 motion and is now included in this transfer order. All parties to this action had notice of the proceedings before the Panel relating to Section 1407 centralization and had an opportunity to participate in those proceedings by stating their respective positions in writing and during the Panel's hearing session.

The Panel has been notified of nearly 300 potentially related actions pending in multiple federal districts. In light of the Panel's disposition of this docket, these actions will be treated as potentially related actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

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Costs \_\_\_\_\_  
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- 2 -

The three arguments in opposition to Section 1407 centralization can be summarized as follows: plaintiffs in two actions oppose inclusion of their actions in MDL-1657 proceedings because motions to remand their actions to state court are pending; plaintiffs in one action opposing Texas actions along with plaintiffs in one third-party payor action pending in the Southern District of New York oppose these actions' inclusion in MDL-1657, arguing that individual questions of fact in their actions predominate over any common questions of fact and/or that discovery is already underway in these actions; and plaintiffs in one action pending in the Eastern District of New York oppose inclusion of their action in 1407 proceedings, since it involves additional claims relating to a different prescription medication not involved in other MDL-1657 actions

On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Louisiana will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions focus on alleged increased health risks (including heart attack and/or stroke) when taking Vioxx, an anti-inflammatory drug, and whether Merck knew of these increased risks and failed to disclose them to the medical community and consumers. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, avoid inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary

The pendency of a motion to remand to state court is not a sufficient basis to avoid inclusion in Section 1407 proceedings. We note that motions to remand in two actions, one action each in the District of Kansas and the Eastern District of Missouri, as well as in any other MDL-1657 actions can be presented to and decided by the transferee judge. See, e.g., *In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

Nor are we persuaded by the arguments of some opposing Texas plaintiffs and the New York third-party payor plaintiffs. We point out that transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: 1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (J.P.M.L. 1976); and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. We note that the MDL-1657 transferee court can employ any number of pretrial techniques – such as establishing separate discovery and/or motion tracks – to efficiently manage this litigation. In any event, we leave the extent and manner of coordination or consolidation of these actions to the discretion of the transferee court. *In re Mutual Funds Investment Litigation*, 310 F.Supp.2d 1359 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. But we are unwilling, on the basis of the record before us, to make such a determination at this time. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. See Rule 7.6, 199 F.R.D. at 436-38. We are confident in the transferee judge's ability to streamline pretrial proceedings in these actions, while concomitantly directing the appropriate resolution of all claims.

- 3 -

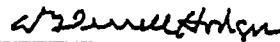
The Panel is persuaded, however, that claims involving a prescription drug other than Vioxx in one Eastern District of New York action do not share sufficient questions of fact with claims relating to Vioxx to warrant inclusion of these non-Vioxx claims in MDL-1657 proceedings

Given the geographic dispersal of constituent actions and potential tag-along actions, no district stands out as the geographic focal point for this nationwide docket. Thus we have searched for a transferee judge with the time and experience to steer this complex litigation on a prudent course. By centralizing this litigation in the Eastern District of Louisiana before Judge Eldon E. Fallon, we are assigning this litigation to a jurist experienced in complex multidistrict products liability litigation and sitting in a district with the capacity to handle this litigation.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on the attached Schedule A and pending outside the Eastern District of Louisiana are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

IT IS FURTHER ORDERED that claims in *Dominick Cain, et al. v. Merck & Co., Inc., et al.*, E.D. New York, C.A. No. 1:01-3441, against Pharmacia Corp., Pfizer Inc., and G.D. Searle & Co. relating to a prescription medication other than Vioxx are simultaneously separated and remanded to the Eastern District of New York.

FOR THE PANEL:



Wm Terrell Hodges  
Chairman

**SCHEDULE A**

MDL-1657 -- In re Vioxx Products Liability Litigation

**SECT. I MAG. 3**

CASE NO. ASSIGNED  
EASTERN DIST OF LOUISIANA

Middle District of Alabama

<i>Paul Turner, Sr. v. Merck &amp; Co, Inc</i> , C.A. No 1:04-999	05-0428
<i>Danny M Wilson v. Merck &amp; Co, Inc.</i> , C.A No 2:03-844	05-0429

Northern District of Alabama

<i>Carolyn O Hensley, etc v Merck &amp; Co., Inc</i> , C.A. No. 1:03-906	05-0430
<i>William Cook v. Merck &amp; Co, Inc., et al</i> , C.A. No. 2:02-2710	05-0431
<i>Sharon Scott Jones v Merck &amp; Co, Inc</i> , C.A No. 5:04-3079	05-0432

Southern District of Alabama

<i>Carolyn Younge, etc v Merck &amp; Co, Inc., et al</i> , C.A No 1:03-125	05-0433
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Eastern District of Arkansas

<i>Linda Sue Otts v Merck &amp; Co., Inc</i> , C.A No 5:04-57	05-0434
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Western District of Arkansas

<i>Bobby Brown, et al v. Merck &amp; Co., et al</i> , C.A No 4:04-4140	05-0435
<i>Arthur Fulton, etc v. Merck &amp; Co, Inc</i> , C.A No. 6:03-6107	05-0436

Central District of California

<i>Charles Ashman v Merck &amp; Co, Inc</i> , C.A. No. 2:04-8225	05-0437
<i>Janet Briggs v Merck &amp; Co, Inc</i> , C.A No. 2:04-9275	05-0438

Northern District of California

<i>Kathy Tokes v Merck &amp; Co, Inc</i> , C.A No. 3:04-4435	05-0439
<i>Patricia A Taylor v. Merck &amp; Co, Inc</i> , C.A No 3:04-4510	05-0440
<i>Jeffrey Brass v Merck &amp; Co, Inc</i> , C.A. No 3:04-4521	05-0441

Middle District of Florida

<i>Frances Dunleavy, et al v Merck &amp; Co, Inc</i> , C.A No 2:04-539	05-0442
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- A2 -

## MDL-1657 Schedule A (Continued)

**SECT. L MAG. 3**Northern District of Florida

*Benjamin Burt, et al v Merck & Co, Inc.*, C A No. 3:04-388 05-0443

Southern District of Florida

*Ellen B. Gerber, et al v Merck & Co, Inc.*, C A No. 0:04-61429 05-0444  
*Josefa Abraham, et al v. Merck & Co, Inc.*, C A. No 1:04-22631 05-0445  
*Sidney Schneider v Merck & Co, Inc., et al*, C A. No 1:04-22632 05-0446  
*Clara Fontanilles v. Merck & Co, Inc.*, C.A. No. 1:04-22799 05-0447  
*Stanley Silber, et al v Merck & Co., Inc.*, C A No 9:04-80983 05-0448

Northern District of Georgia

*Richard Zellmer v Merck & Co, Inc., et al*, C.A No 1:03-2530 05-0449  
*Edna Strickland v Merck & Co, Inc.*, C.A. No. 1:04-3231 05-0450

Northern District of Illinois

*Linda Grant, et al v Merck & Co, Inc.*, C A No. 1:04-6407 05-0451  
*Constance Oswald v Merck & Co., Inc.*, C.A. No 1:04-6741 05-0452  
*Anita Ivory v Merck & Co, Inc.*, C A No. 1:04-7218 05-0453

Southern District of Illinois

*Roberta Walson, etc. v Merck & Co., Inc.*, C.A No. 3:04-27 05-0454  
*John Ellis v. Merck & Co., Inc., et al*, C A. No 3:04-792 05-0455  
*Bulbrey v. Merck & Co., Inc.*, C A. No 3:04-836 05-0456

Southern District of Indiana

*Estate of Lowell D Morrison v Merck & Co, Inc.*, C A No 1:03-1535 05-0457  
*Kimberly Van Jelgerhuis, et al v Merck & Co, Inc.*, C A No 1:04-1651 05-0458

District of Kansas

*Vicky Hunter v Merck & Co, Inc.*, C A No 2:04-2518 05-0459  
*Betty S Snuth v. Merck & Co, Inc.*, C A No 6:04-1355 05-0460



- A3 -

## MDL-1657 Schedule A (Continued)

**SECT. 1 MAG. 3**Eastern District of Kentucky

<i>Daniel K. Williams v Merck &amp; Co., Inc</i> , C.A. No. 2:04-235	05-0461
<i>Richard J Getty, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:04-452	05-0462

Eastern District of Louisiana

*Salvadore Christina, Sr v Merck & Co., Inc*, C.A. No. 2:04-2726  
*Angelis Alexander v Merck & Co., Inc*, C.A. No. 2:04-2845  
*Leonce Davis v Merck & Co., Inc*, C.A. No. 2:04-2937  
*Mary V. Gagola v Merck & Co., Inc*, C.A. No. 2:04-3053  
*Christine L Parr v Merck & Co., Inc*, C.A. No. 2:04-3054  
*Clifton Adam Savage, Sr v Merck & Co., Inc*, C.A. No. 2:04-3055  
*Delores Thomas Robertson v Merck & Co., Inc*, C.A. No. 2:04-3056  
*Howard Mark Falick v Merck & Co., Inc*, C.A. No. 2:04-3060  
*Warren L. Gottsegen, M D v Merck & Co., Inc*, C.A. No. 2:04-3065

Middle District of Louisiana

<i>Michael Wayne Russell v Merck &amp; Co., Inc</i> , C.A. No. 3:04-712	05-0463
<i>Linda Kay Hudson v Merck &amp; Co., Inc</i> , C.A. No. 3:04-776	05-0464
<i>Jesse Wilkinson v Merck &amp; Co., Inc</i> , C.A. No. 3:04-800	05-0465
<i>Wilson Brown v Merck &amp; Co., Inc</i> , C.A. No. 3:04-801	05-0466
<i>Dorothy Bracken v Merck &amp; Co., Inc</i> , C.A. No. 3:04-802	05-0467
<i>James Edward Benoit v Merck &amp; Co., Inc</i> , C.A. No. 3:04-803	05-0468
<i>Clarence Chiszie v Merck &amp; Co., Inc</i> , C.A. No. 3:04-804	05-0469

Western District of Louisiana

<i>Anthony J. Mallet, et al v Merck &amp; Co., Inc, et al</i> , C.A. No. 2:02-2304	05-0470
<i>Calvin Warren, et al v Merck &amp; Co., Inc</i> , C.A. No. 3:04-2110	05-0471
<i>Vicki White v Merck &amp; Co., Inc</i> , C.A. No. 3:04-2126	05-0472
<i>Norma Merrit, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:03-1401	05-0473
<i>Herchial Wright, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2268	05-0474
<i>Leroy Bates, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2269	05-0475
<i>Vaughn McKnight v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2270	05-0476
<i>Josephine Harper v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2271	05-0477
<i>Lendell Burns, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2272	05-0478
<i>Leona Sadler v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2273	05-0479
<i>William Tice, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2274	05-0480
<i>Maynard Butler, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2275	05-0481
<i>Marion Evans, et al v Merck &amp; Co., Inc</i> , C.A. No. 5:04-2276	05-0482
<i>Donna Lavergne v Merck &amp; Co., Inc</i> , C.A. No. 6:04-2174	05-0483

- A4 -

## MDL-1657 Schedule A (Continued)

BEST COPY 3

District of Maryland

<i>Lindsey Edler, etc. v. Merck &amp; Co, Inc</i> , C.A. No 1:03-3612	05-0484
<i>Melvin Biles v. Merck &amp; Co, Inc</i> , C.A. No. 1:04-975	05-0485
<i>David Morris, Jr. v Merck &amp; Co, Inc.</i> , C.A. No 8:04-3024	05-0486
<i>Daniel Martin Jeffers, et al. v. Merck &amp; Co, Inc</i> , C.A. No 8:04-3604	05-0487

District of Massachusetts

<i>Frank R. Saia v Merck &amp; Co, Inc</i> , C.A. No. 1:04-12166	05-0488
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District of Minnesota

<i>Carolyn Y. Glover v. Merck &amp; Co., Inc</i> , C.A. No 0:03-5166	05-0489
<i>Lowell Burris, Jr. v Merck &amp; Co, Inc</i> , C.A. No. 0:04-4375	05-0490
<i>Shirley Homister v Merck &amp; Co, Inc.</i> , C.A. No. 0:04-4754	05-0491

Northern District of Mississippi

<i>Frances Shannon, et al. v. Merck &amp; Co., Inc., et al.</i> , C.A. No. 2:03-105	05-0492
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Southern District of Mississippi

<i>Leona McFarland et al. v. Merck &amp; Co, Inc., et al</i> , C.A. No 2:03-247	05-0493
<i>Bettye J. Magee, et al v Merck &amp; Co, Inc, et al.</i> , C.A. No 2:03-249	05-0494
<i>Jerry Melton v Merck &amp; Co, Inc, et al</i> , C.A. No 2:04-372	05-0495
<i>Janet Sue Morgan, et al v. Merck &amp; Co., Inc., et al.</i> , C.A. No 3:03-435	05-0496
<i>Brenda Price, et al v Merck &amp; Co, Inc, et al</i> , C.A. No 3:04-866	05-0497

Eastern District of Missouri

<i>Deyonne E. Whitmore v Merck &amp; Co, Inc</i> , C.A. No 4:03-1354	05-0498
<i>Janice Perkins v. Merck &amp; Co., Inc</i> , C.A. No. 4:04-1446	05-0499
<i>Jurhee Bench v Merck &amp; Co, Inc.</i> , C.A. No 4:04-1447	05-0500

Western District of Missouri

<i>Caroline Nevels v Merck &amp; Co, Inc, et al.</i> , C.A. No 4:04-952	05-0501
<i>Russell Young, etc v Merck &amp; Co.</i> , C.A. No. 6:04-5117	05-0502

- A5 -

## MDL-1657 Schedule A (Continued)

SECT. I MAG. 3

District of New Jersey

<i>Patrick Besaw v Merck &amp; Co, Inc</i> , C.A. No 3:04-5178	05-0503
<i>Brenda Aguero, et al v Merck &amp; Co, Inc</i> , C.A. No 3:04-5341	05-0504

Eastern District of New York

<i>Dominick Cain, et al v Merck &amp; Co, Inc, et al.</i> , C.A. No. 1:01-3441	05-0505
<i>William Hanson v Merck &amp; Co, Inc.</i> , C.A. No 1:04-2949	05-0506
<i>Jerome Covington v. Merck &amp; Co, Inc</i> , C.A. No 1:04-4439	05-0507
<i>Alan Mell v Merck &amp; Co., Inc</i> , C.A. No. 1:04-4606	05-0508
<i>Lorraine Fialo v. Merck &amp; Co, Inc</i> , C.A. No. 1:04-4686	05-0509
<i>Lawrence Wright, et al v Merck &amp; Co, Inc</i> , C.A. No 2:04-4485	05-0510
<i>William Fontanetta, et al. v. Merck &amp; Co, Inc</i> , C.A. No 2:04-4486	05-0511

Southern District of New York

<i>Laney C Davis v Merck &amp; Co, Inc</i> , C.A. No. 1:04-8082	05-0512
<i>Elizabeth Aiken v Merck &amp; Co, Inc</i> , C.A. No. 1:04-8085	05-0513
<i>Walter McNaughton v Merck &amp; Co Inc</i> , C.A. No. 1:04-8297	05-0514
<i>Carmen M Pagan, et al v Merck &amp; Co, Inc</i> , C.A. No. 1:04-8959	05-0515
<i>Teamsters Local 237 Welfare Fund, et al v. Merck &amp; Co, Inc</i> , C.A. No 1:04-9248	05-0516
<i>Anna Quick v Merck &amp; Co, Inc</i> , C.A. No. 7:04-8169	05-0517

Northern District of Ohio

<i>Marjory Knoll v Merck &amp; Co, Inc</i> , C.A. No. 1:04-2209	05-0518
<i>Danford K Jones et al. v Merck &amp; Co, Inc</i> , C.A. No 1:04-2217	05-0519
JAMES F. <i>Meadows, et al v Merck &amp; Co., Inc.</i> , C.A. No. 1:04-2229	05-0520
<i>Wanda Moldovan et al v Merck &amp; Co., Inc.</i> , C.A. No 1:04-2245	05-0521
<i>Janet Dauterman, et al v Merck &amp; Co, Inc</i> , C.A. No 3:03-7623	05-0522

Western District of Oklahoma

<i>Paul E House v. Merck &amp; Co., Inc.</i> , C.A. No 5:04-1235	05-0523
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Eastern District of Pennsylvania

<i>Henry Smith, et al v Merck &amp; Co., Inc.</i> , C.A. No 2:04-4713	05-0524
<i>Michelle Donovan v Merck &amp; Co., Inc.</i> , C.A. No. 2:04-4882	05-0525
<i>Gwendolyn L. Carr v. Merck &amp; Co, Inc</i> , C.A. No 2:04-4900	05-0526
<i>Fred S Engle v Merck &amp; Co., Inc.</i> , C.A. No. 2:04-5077	05-0527
<i>Merrick Sirota, et al v Merck &amp; Co., Inc</i> , C.A. No 2:04-5130	05-0528

- A6 -

## MDL-1657 Schedule A (Continued)

**SECT. L. MAG. 3**District of Puerto Rico

*Rafael Gonzalez-Arias, et al v Merck & Co, Inc*, C.A No 3:04-2263 05-0529

District of South Carolina

*Bridget Elaine Michaud, etc v Merck & Co., Inc.*, C.A. No 4:03-3083 05-0530

Eastern District of Texas

*Arthur Clifford Hall, et al v Merck & Co, Inc.*, C.A. No 1:04-684 05-0531  
*Brenda Lewis, et al v Merck & Co., Inc*, C.A. No 1:04-685 05-0532  
*Billie Painton, et al v Merck & Co, Inc*, C.A No 1:04-686 05-0533  
*Lovincy Richard, et al v Merck & Co, Inc., et al*, C.A. No. 1:04-703 05-0534  
*Bill Jolley, et al. v. Merck & Co, Inc*, C.A. No 2:04-376 05-0535  
*Marian Williamson, etc v Merck & Co, Inc*, C.A No 2:04-406 05-0536  
*Deborah Daley, etc v Merck & Co., Inc, et al.*, C.A No 6:03-509 05-0537

Northern District of Texas

*Dallas Staples, et al v Merck & Co, Inc, et al*, C.A No 3:03-180 05-0538  
*Michael R Leonard v Merck & Co, Inc*, C.A. No 3:04-2157 05-0539  
*Jack A Register, et al v Merck & Co, Inc, et al*, C.A No. 3:04-2259 05-0540

Southern District of Texas

*Heirs of the Estate of Pablo Flores v. Merck & Co. Inc., et al*, C.A. No. 2:03-362 05-0541  
*Audona Sandoval v. Merck & Co, Inc*, C.A No. 2:04-544 05-0542  
*Jeffrey L. Denny, et al v Merck & Co., Inc., et al*, C.A No 3:04-526 05-0543  
*Kimberly D Stubblefield, etc v. Merck & Co., Inc., et al*, C.A. No. 4:02-3139 05-0544  
*John P Eberhardt v Merck & Co, Inc*, C.A. No. 4:03-1380 05-0545  
*Myrtle Louise Bell, et al v. Merck & Co., Inc., et al*, C.A No. 4:03-3448 05-0546  
*Thomas Joseph Pikul, etc v Merck & Co, Inc., et al.*, C.A No 4:03-3656 05-0547  
*Opalene Stringer, et al v Merck & Co., Inc., et al*, C.A No 4:03-3657 05-0548  
*Reginald K Fears v Merck & Co, Inc*, C.A. No. 4:04-4187 05-0549  
*Peggy J Balch v Merck & Co, Inc*, C.A. No. 4:04-4201 05-0550  
*John R Stout v Merck & Co, Inc*, C.A. No 4:04-4205 05-0551  
*Charles C. Gilmore v Merck & Co., Inc.*, C.A. No 4:04-4206 05-0552  
*Johnny White v Merck & Co, Inc*, C.A. No 4:04-4207 05-0553  
*Donna Hale v Merck & Co, Inc*, C.A No 4:04-4208 05-0554  
*Bernadette Young v Merck & Co, Inc.*, C.A No. 4:04-4209 05-0555  
*William B Gregory, Jr. v Merck & Co., Inc.*, C.A No 4:04-4327 05-0556

- A7 -

MDL-1657 Schedule A (Continued)

Southern District of Texas (Continued)

SECT. I MAG.

<i>Patricia Benavides, etc v. Merck &amp; Co, Inc., et al</i> , C A No 5:03-134	05-0557
<i>Patricia Benavides, etc. v Merck &amp; Co, Inc, et al</i> , C A No 5:04-153	05-0558
<i>Olga Sanchez v Merck &amp; Co, Inc, et al</i> , C A No. 7:04-352	05-0559
<i>Maria Emma Hinojosa v Merck &amp; Co, Inc, C.A. No. 7:04-373</i>	05-0560

Western District of Texas

<i>Joe Hopson, etc. v Merck &amp; Co., Inc, et al</i> , C A. No 1:04-485	05-0561
<i>Larry Lee Bauman, et al. v Merck &amp; Co, Inc, C A No. 1:04-707</i>	05-0562
<i>Carolyn Reed etc v Minor, et al</i> , C A No. 1:04-731	05-0563

District of Utah

<i>Della Jo Salt, et al v Merck &amp; Co, Inc, C A No 2:01-794</i>	05-0564
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District of Vermont

<i>Sara Cheeseman v Merck &amp; Co Inc, C A No 1:04-261</i>	05-0565
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Western District of Virginia

<i>Catherine Wheatley, etc v Merck &amp; Co, Inc, et al</i> , C.A No. 2:04-20	05-0566
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## Judicial Panel on Multidistrict Litigation Panel Attorney Service List

Page 1

Docket: 1657 - In re Vioxx Products Liability Litigation

Status: Transferred on 02/16/2005

Transferee District: LAE Judge: Fallon, Eldon E

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Page 7

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=> Donovan Michelle

=> Wal-Mart Stores Inc

=> Mettsave Drugs; Quitman Drug Co

=> Brown Bobby\*; Brown Linda\*; Daley (Ind /Rep /Est -Robert Deleon & Next Friend for Scott A & Shirley Mann) Deborah\*; Stubblefield (Ind /Rep /Est -Keith Jerome & Next Friend-Keith Jerome Korieta Lashay Kendall Wayne& Kedrick Roy), Kimberly D \*

=> Community Discount Pharmacy\*

=> Schneider Sidney

=> Besaw Patrick\*; Smith Henry\*; Smith Mary\*

=> Ahl June\*; Alaniz Flora\*; Allen, George\*; Alston Jr, John\*; Anglin Helen\*; Austin Nancy\*; Baker, Mary\*; Baker Norma\*; Baldwin Kenneth\*; Banks, Judy\*; Barrington Ernest\*; Bell, Myrtle Louise\*; Benavides (Ind /Rep/Est -Lucia Gutierrez), Patricia\*; Berry, Flora\*; Bogdany Arthur\*; Bridgers, Rebecca\*; Bronze Sandra\*; Brooks Fredrick\*; Brow Mary\*; Brown, Esther\*; Brown, Watie\*; Buck Patricia\*; Buckner Claude\*; Bullock, Barbara\*; Burk-Cameron Patricia\*; Burkett (Legal Heir/Est -Lelan Stringer) Majorie\*; Burrell Willie\*; Busby-Allen, Sharla\*; Butcher Shirley\*; Calder Virginia\*; Camacho Maria\*; Carney Homer\*; Carter Andrea\*; Carter Essie\*; Carter, Helen Portis\*; Castro Hortensia\*; Cebum Alice\*; Chambers Christopher\*; Chane, Della\*; Chatman Charles\*; Childress, Cynthia\*; Chocolate, Belinda\*; Clark Beulah\*; Clark Cortrena\*; Clark Delores\*; Clark Mary\*; Clayton, Marsha\*; Cluff, Anna\*; Coleman Lula\*; Combs David\*; Cooper Roberts\*; Coppedge Darryle\*; Crick, Kimberly\*; Cruz, Esperanza\*; Cryer Becky\*; Dahl, David\*; De La Rosa, Odilla\*; Deanza Barbara\*; Denny, Jeffrey L \*; Denny Molly J \*; Diaz Mary\*; Duncan Shirley\*; Elam Claudia\*; England James\*; Fischbach Arleigh\*; Flaniken Betty\*; Forbes James\*; Foward Joe\*;

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Notes: Please refer to the report title page for complete report scope and key

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=> Ellis John\*

=> Abraham Josefa\* Alcaez Maria P \*; Andino Jose\*

=> Aiken (Adm /Est -Mary & Kenneth) Elizabeth; Covington Jerome; Davis Laney C

=> Saia Frank R \*

=> Morrison (By his Per /Representative Patricia L ) Lowell D

=> Moldovan Gregory\*; Moldovan Wanda\*

=> Brown Claire; Hanson William\*; Pagan Carmen M ; Walson (Ind /Adm /Est -Willie Jr ) Roberta\*

=> Bias Byron; Varnado Carolyn

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# **EXHIBIT B**

# Hughes Hubbard & Reed LLP

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Telephone: 212-837-6000  
Fax: 212-422-4726

May 10, 2005

VIA FEDERAL EXPRESS

Michael J. Beck, Esq.  
Catherine Maida  
Judicial Panel on Multidistrict Litigation  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E., Room G-255, North Lobby  
Washington, D.C. 20002-8004

Re: In re: VIOXX® Products Liability Litigation, MDL  
Docket No. 1657

Dear Sir and Madam:

Pursuant to J.P.M.L. Rule 7.5(e), Merck hereby notifies the Panel of potential "tag-along actions." This letter is Merck's twenty-sixth notification of potential "tag-along actions" and includes cases that have been filed in or removed to federal court since May 6, 2005. Courtesy copies of the complaints and docket sheets for the following actions are enclosed.

1. *Gramlich v. Merck & Co., Inc.*, C.A. No.3:05-cv-01839 (N.D. Cal.)
2. *Martin et al v. Merck & Co., Inc.*, C.A. No. 3:05-cv-01838 (N.D. Cal.)
3. *Harvey v. Merck & Co., Inc.*, C.A. No. 05-cv-961 (S.D. Cal.)
4. *Lane v. Merck & Co., Inc.*, C.A. No. 2:05-cv-00202 (M.D. Fla.)
5. *Commonwealth Care Alliance et al v. Merck & Co., Inc.*, C.A. No. 1:05-cv-10931 (D. Mass.)
6. *Couch et al v. Merck & Co., Inc.*, C.A. No. 1:05-cv-00301 (S.D. Ohio)
7. *Drum v. Merck & Co., Inc.*, C.A. No. 2:05-cv-00330 (S.D. Ohio)
8. *Bianchino et al v. Merck & Co., Inc.*, C.A. No. 2:05-cv-02204 (E.D. Penn.)
9. *Pierson et al v. Merck & Co., Inc.*, C.A. No. 2:05-cv-02156 (E.D. Penn.)
10. *Lewis v. Merck & Co., Inc.*, C.A. No. 4:05-cv-00934 (M.D. Penn.)
11. *Burke v. Merck & Co., Inc.*, C.A. No. 1:05-cv-00112 (E.D. Tenn.)

There are three new cases filed in the transferee court.

1. *Carter v. Merck & Co., Inc.*, C.A. No. 2:05-cv-01689 (E.D. La.)

47, Avenue Georges Mandel  
75116 Paris, France  
(33) (1) 44.05.80.00

1775 I Street, N.W.  
Washington, D.C.  
20006-2401  
202-721-4600

350 South Grand Avenue  
Los Angeles, California  
90071-3442  
213-613-2800

201 South Biscayne Boulevard  
Miami, Florida  
33131-4332  
305-358-1666

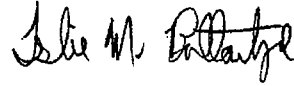
Akasaka Tokyu Building 6F  
2-14-3 Nagata-cho, Chiyoda-ku  
Tokyo 100-0014 Japan  
(81) (3) 3539-2771

101 Hudson Street  
Jersey City, New Jersey  
07302-3918  
201-536-9220

Hughes Hubbard & Reed LLP

2. *Gaspard v. Merck & Co., Inc.*, C.A. No. 2:05-cv-01700 (E.D. La.)
3. *White et al v. Merck & Co., Inc.*, C.A. No. 2:05-cv-01656 (E.D. La.)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leslie M. Ballantyne". The signature is written in a cursive, flowing style.

Leslie M. Ballantyne

Enclosures

# **EXHIBIT C**

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

2005 FEB 18 AM 10:35

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

LORETTA G. WHYTE  
CLERK *m*

IN RE: VIOXX  
PRODUCTS LIABILITY LITIGATION

: MDL NO 1657

: SECTION: L

: JUDGE FALLON  
: MAG JUDGE KNOWLES

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER #1**  
**Setting Initial Conference**

It appearing that civil actions listed on Schedule A, attached hereto, which were transferred to this Court by order of the Judicial Panel on Multi District Litigation pursuant to its order of February 16, 2005, merit special attention as complex litigation, it is, therefore, ORDERED that:

1 APPLICABILITY OF ORDER---Prior to the initial pretrial conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that were transferred to this Court by the Judicial Panel on Multi District Litigation pursuant to its order of February 16, 2005 listed on Schedule A. This Order also applies to all related cases filed in all sections of the Eastern District of Louisiana and will also apply to any "tag-along actions" later filed in, removed to, or

DATE OF ENTRY  
FEB 18 2005

Fee \_\_\_\_\_  
Process *SPD*  
☒ Dktd *170*  
☒ Cir/Dep \_\_\_\_\_  
Doc. No. *7*

transferred to this Court

2 CONSOLIDATION---The civil actions listed on Schedule A are consolidated for pretrial purposes. Any "tag-along actions" later filed in, removed to or transferred to this Court, or directly filed in the Eastern District of Louisiana, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

3 DATE OF INITIAL CONFERENCE AND AGENDA FOR CONFERENCE---

Matters relating to pretrial and discovery proceedings in these cases will be addressed at an initial pretrial conference to be held on Friday, March 18, 2005 at 9:00 a.m. in Judge Eldon E. Fallon's courtroom, Room 468, United States Courthouse, 500 Poydras Street, New Orleans, Louisiana. Counsel are expected to familiarize themselves with the *Manual for Complex Litigation, Fourth* ("MCL 4th") and be prepared at the conference to suggest procedures that will facilitate the expeditious, economical, and just resolution of this litigation. The items listed in MCL 4th Sections 22.6, 22.61, 22.62, and 22.63 shall, to the extent applicable, constitute a tentative agenda for the conference. Counsel shall confer and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan, amendment of pleadings, and consideration of any class action allegations and motions. If the parties have any suggestions as to any case management orders or additional agenda items, these shall be faxed to (504) 589-6966 or otherwise submitted to the Court by March 11, 2005.



4 POSITION STATEMENT---Plaintiffs and defendants shall submit to the Court by March 11, 2005 a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings. The parties' statements shall list all pending motions, as well as all related cases pending in state or federal court, together with their current status, including any discovery taken to date, to the extent known. The parties shall be limited to one such submission for all plaintiffs and one such submission for all defendants.

5 APPEARANCE---Each party represented by counsel shall appear at the initial pretrial conference through their attorney who will have primary responsibility for the party's interest in this litigation. Parties not represented by counsel may appear in person or through an authorized and responsible agent. To minimize costs and facilitate a manageable conference, parties with similar interests may agree, to the extent practicable, to have an attending attorney represent their interest at the conference. A party will not by designating an attorney to represent its interest at the conference be precluded from other representation during the litigation, nor will attendance at the conference waive objections to jurisdiction, venue or service.

6 SERVICE---Prior to the initial pretrial conference, service of all papers shall be made on each of the attorneys on the Panel Attorney Service List attached hereto and designated as Schedule B. Any attorney who wishes to have his/her name added to or deleted from such Panel Attorney Service List may do so upon request to the Clerk and notice to all other persons on such service list. The parties shall present to the Court at the initial conference a list of attorneys and their office addresses and E-mail addresses.

7. EXTENSION AND STAY---The defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set by this Court. Pending the initial conference and further orders of this Court, all outstanding discovery proceedings are stayed, and no further discovery shall be initiated. Moreover, all pending motions must be renoticed for resolution on a motion day or days after the Court's initial conference herein.

8. MASTER DOCKET FILE---The Clerk of Court will maintain a master docket case file under the style "In Re: VIOXX Products Liability Litigation" and the identification "MDL No. 1657". When a pleading is intended to be applicable to all actions, this shall be indicated by the words: "This Document Relates to All Cases." When a pleading is intended to apply to less than all cases, this Court's docket number for each individual case to which the document number relates shall appear immediately after the words "This Document Relates to". The following is a sample of the pleading style:

In Re: VIOXX  
Products Liability Litigation

MDL No. 1657

SECTION: L

This Document Relates to:

Judge Fallon  
Mag. Judge Knowles

9. FILING---Until electronic filing is instituted in the Eastern District of Louisiana, a signed original of any pleading or paper together with the number of copies set forth in the Local Rules is all that need be filed. The Clerk of Court is directed to make all entries on the master docket sheet with a notation listing the cases to which the document applies, except that a document closing a case will also be entered on the individual docket sheet. All documents shall be filed in the master file.

10 DOCKETING---When an action that properly belongs as a part of In Re: VIOXX Products Liability Litigation is hereinafter filed in the Eastern District of Louisiana or transferred here from another court, the Clerk of this Court shall:

- a File a copy of this Order in the separate file for such action;
- b Make an appropriate entry on the master docket sheet;
- c Mail to the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order;
- d Upon the first appearance of any new defendant, mail to the attorneys for the defendant in such newly filed or transferred cases a copy of this Order

11 APPEARANCES---Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court. Moreover, attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation, and the requirements of Local Rules 83.2.6E and 83.2.7 are waived. Association of local counsel is not required.

12 REMAND STIPULATIONS---In the event that a case is remanded, the parties shall furnish to the Clerk of Court a stipulation or designation of the contents of the record and furnish all necessary copies of any pleadings filed so as to enable the transferee clerk to comply with the order of remand.

13 PRESERVATION OF EVIDENCE---All parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess

materials reasonably anticipated to be subject to discovery in this action "Documents, data, and tangible things" is to be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic messages, voice mail, E-mail, telephone message records or logs, computer and network activity logs, hard drives, backup data, removable computer storage media such as tapes, discs and cards, printouts, document image files, Web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices, bills, vouchers, checks statements, worksheets, summaries, compilations, computations, charts, diagrams, graphic presentations, drawings, films, charts, digital or chemical process photographs, video, phonographic, tape or digital recordings or transcripts thereof, drafts, jottings and notes, studies or drafts of studies or other similar such material Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition. Until the parties reach an agreement on a preservation plan or the Court orders otherwise, each party shall take reasonable steps to preserve all documents, data and tangible things containing information potentially relevant to the subject matter of this litigation Counsel is under an obligation to the Court to exercise all reasonable efforts to identify and notify parties and nonparties, including employees of corporate or institutional parties.

14 FILING OF DISCOVERY REQUESTS---In accordance with Rule 5(d) of the Federal Rules of Civil Procedure, discovery requests and responses are not to be filed with the Clerk nor sent to the Judge's Chambers, except when specifically ordered by the Court to the extent needed in connection with a motion

15. LIAISON COUNSEL---Prior to the initial conference, counsel for the plaintiffs and counsel for the defendant shall, to the extent they have not already done so, confer and seek consensus on the selection of a candidate for the position of liaison counsel for each group who will be charged with essentially administrative matters. For example, liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group and perform other tasks determined by the Court. Liaison counsel shall be required to maintain complete files with copies of all documents served upon them and shall make such files available to parties within their liaison group upon request. Liaison counsel are also authorized to receive orders and notices from the Judicial Panel on Multi District Litigation pursuant to Rule 5 2(e) of the Panel's *Rules of Procedure* or from the transferee court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group. The expenses incurred in performing the services of liaison counsel shall be shared equally by all members of the liaison group in a manner agreeable to the parties or set by the Court failing such agreement. Appointment of liaison counsel shall be subject to the approval of the Court. At the first conference liaison counsel and/or the parties should be prepared to discuss any additional needs for an organizational structure or any additional matters consistent with the efficient handling of this matter.

16. PLAINTIFFS' STEERING COMMITTEE---It is the Court's intent to appoint a Plaintiffs' Steering Committee ("PSC") to conduct and coordinate the discovery stage of this litigation with the defendant's representatives or committee. Applications/nominations for the

PSC positions must be filed as an original and one copy with the Eastern District of Louisiana's Clerk's Office on or before Monday, March 28, 2005. A copy must also be served upon counsel named in the attached list on the day of filing. The main criteria for membership in the PSC will be: (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; and (c) professional experience in this type of litigation.

Applications/nominations should succinctly address each of the above criteria as well as any other relevant matters. No submissions longer than three (3) pages will be considered. The Court will only consider attorneys who have filed a civil action in this litigation.

Objections may be made to the appointment of a proposed applicant/nominee. Nevertheless, the Court will entertain only written objections to any application/nomination. These must be filed with the Clerk in an original and one copy on or before April 4, 2005. The objections, if there be any, must be short, yet thorough, and must be supported by necessary documentation. As with the application/nomination, any objection must be served on all counsel appearing on the attached list on the day of filing.

The PSC will have the following responsibilities:

Discovery

- (1) Initiate, coordinate, and conduct all pretrial discovery on behalf of plaintiffs in all actions which are consolidated with the instant multi-district litigation
- (2) Develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs
- (3) Cause to be issued in the name of all plaintiffs the necessary discovery

requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Similar requests, notices, and subpoenas may be caused to be issued by the PSC upon written request by an individual attorney in order to assist him/her in the preparation of the pretrial stages of his/her client's particular claims.

- (4) Conduct all discovery in a coordinated and consolidated manner on behalf and for the benefit of all plaintiffs. No attorney for a plaintiff may be excluded from attending the examination of witnesses and other proceedings. Such attorney may suggest questions to be posed to deponents through the designated PSC members provided that such questions are not repetitious.

#### Hearings and Meetings

- (1) Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court. Initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matter(s) pertaining to pretrial proceedings.
- (2) Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.
- (3) Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject of course to the right of any plaintiff's counsel to present non-repetitive individual or different

positions

Miscellaneous

- (1) Submit and argue any verbal or written motions presented to the Court or Magistrate on behalf of the PSC as well as oppose when necessary any motions submitted by the defendant or other parties which involve matters within the sphere of the responsibilities of the PSC
- (2) Negotiate and enter into stipulations with Defendants regarding this – litigation. All stipulations entered into by the PSC, except for strictly administrative details such as scheduling, must be submitted for Court approval and will not be binding until the Court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the Court a written objection thereto within ten (10) days after he/she knows or should have reasonably become aware of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party
- (3) Explore, develop, and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation
- (4) Maintain adequate files of all pretrial matters and have them available, under reasonable terms and conditions, for examination by Plaintiffs or their attorneys.
- (5) Prepare periodic status reports summarizing the PSC's work and progress. These reports shall be submitted to the Plaintiffs' Liaison Counsel who



will promptly distribute copies to the other plaintiffs' attorneys

- (6) Perform any task necessary and proper for the PSC to accomplish its responsibilities as defined by the Court's orders
- (7) Perform such other functions as may be expressly authorized by further orders of this Court.
- (8) Reimbursement for costs and/or fees for services will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing

17 COMMUNICATION WITH THE COURT ---Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel. Nevertheless, the Court recognizes that cooperation by and among plaintiffs' counsel and by and among defendant's counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel and among and between defendant's counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney's work product, and cooperative efforts contemplated above shall in no way be used against any plaintiff by any defendant or against any defendant by any plaintiff. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine

New Orleans, Louisiana, this 17 day of February 2005



ELDON E FALLON  
UNITED STATES DISTRICT JUDGE

Attachments